

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ANTHONY ROLAND McGIVERY,)
)
 Petitioner,)
)
v.)
)
HAROLD W. CLARKE,)
)
 Respondent.)

Civil Action No. 3:18CV561–HEH

MEMORANDUM OPINION
(Denying Motion for Reconsideration)

Petitioner, a Virginia prisoner proceeding *pro se*, submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. By Memorandum Opinion and Order entered on August 31, 2018, the Court dismissed the § 2254 as a successive, unauthorized petition. (ECF Nos. 5, 6.) The matter is before the Court on the Motion for Reconsideration filed by Petitioner. (ECF No. 7.) Petitioner swears that he mailed the Motion for Reconsideration to the Court on September 27, 2018. (*Id.* at 7.) Accordingly, the Court deems the Motion for Reconsideration filed as of that date. *See Houston v. Lack*, 487 U.S. 266, 276 (1988). The Court construes the Motion for Reconsideration as a motion to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e). *See MLC Auto., LLC v. Town of Southern Pines*, 532 F.3d 269, 277–78 (4th Cir. 2008) (citing *Dove v. CODESCO*, 569 F.2d 807, 809 (4th Cir. 1978)).


The United States Court of Appeals for the Fourth Circuit has recognized three grounds for relief under Rule 59(e): “(1) to accommodate an intervening change in

controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993) (citing *Weyerhaeuser Corp. v. Koppers Co.*, 771 F. Supp. 1406, 1419 (D. Md. 1991); *Atkins v. Marathon LeTourneau Co.*, 130 F.R.D. 625, 626 (S.D. Miss. 1990)).

Petitioner contends that the Court committed a clear error of law in treating his new § 2254 petition as successive and unauthorized because he raised a new constitutional challenge to his sentence. Petitioner is wrong. The addition of a new ground for habeas relief does not take his present petition outside the ambit of 28 U.S.C. § 2244(b). *See Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005). Accordingly, the Motion for Reconsideration (ECF No. 7) will be denied. A certificate of appealability will be denied.

An appropriate Final Order will accompany this Memorandum Opinion.

Date: Oct 30, 2018
Richmond, Virginia


_____/s/
Henry E. Hudson
Senior United States District Judge